YONG SANG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) May 13, 1955]

[Ipoh — Criminal Appeal No. 4 of 1955]

Emergency Regulations, 1951, reg. 6D(1) — Terrorist documents — Charge of having under control — Necessity to prove knowledge of existence of documents — Evidence tending to show accused is the sort of person likely to commit the offence.

This was an appeal against the conviction of the appellant on a charge of having terrorist documents under his control in contravention of reg. 6D(1) of the Emergency Regulations. The appellant was driving a lorry when it was stopped by a party of home guards. There were 11 people altogether in the lorry including the regular driver of the lorry. The lorry was searched and in the seat of the driver were found two letters which were terrorist documents within the meaning of the Emergency Regulations. The appeal was brought on two main grounds: (a) the evidence was wrongly led that the appellant had been seen on two occasions in association with terrorists, and (b) there was no proof that the appellant knew of the presence of the terrorist documents in the lorry.

Held: (1) the evidence of association with the terrorists tended to show that the appellant was the sort of person who was likely to commit the offence and was therefore wrongly admitted; (2) there was no evidence that the appellant knew that the terrorist documents were in the lorry and in the absence of proof of such knowledge he could not be said to have the documents under his control.

Case referred to:—

(1) *Public Prosecutor v. Ong Huat Chan & Ors.* (1949) M.L.J. 96.

MAGISTRATE'S CRIMINAL APPEAL.

C. N. Lim for the appellant.

I. Talog Davies (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Thomson J.: — The accused in this case was tried in the Sessions Court at Ipoh on a charge of having terrorist documents under his control in contravention of Regulation 6D(1) of the Emergency Regulations, 1951. He was convicted and sentenced to 5 years imprisonment. Against that conviction and sentence he has now appealed.

Up to a point the facts of the case were not in dispute. On the morning of 10th October, 1954, near Jelapang, the accused was driving a lorry belonging to a timber cutting contractor in the direction of the jungle when it was stopped by a party of home guards. Altogether there were eleven people on the lorry including its regular driver although there was some controversy as to whether the regular driver or a woman was sitting beside the accused. The lorry was searched and in it were found two letters one of them addressed to one Ah Yong which are clearly and beyond doubt terrorist documents within the meaning of the Emergency Regulations.

It is of importance to observe exactly where these documents were found. The cab of the lorry was without doors. It is clear from the photographs in evidence that the driver's seat consisted of a tubular metal frame in the shape of a chair. On this was placed for the driver to sit upon an arrangement of planks like a low stool and on top of this was a folded gunny sack. The two letters were lying on the planks and under the gunny sack.

Shortly afterwards the accused was searched and on his person was found a letter written by himself to a young woman which though perfectly innocent in the sense that it had not the remotest connection with the affairs of the terrorists was one that the writer would probably not wish to be seen by anyone but the addressee.

The only other evidence against the accused was that of two surrendered terrorists. One of these said that on one occasion in February or March, 1954, he saw the accused at a terrorist camp near Jelapang. The other said that in August or September, 1954, he saw the accused on two occasions at a forest compartment where trees were being felled and that on one of these occasions one Ah Yong handed the accused some letters.

The accused's defence was that he was not the regular driver of the lorry, that the lorry was left at nights in the open so that anyone could have access to it and that he had no knowledge whatsoever of the letters or of their presence under the gunny sack.

The Grounds of Appeal are shortly that the evidence of the two surrendered terrorists showing that on two or three occasions prior to 10th October, 1954, the accused had been seen in association with terrorists was inadmissible and highly prejudicial and that in any event it was not proved that the accused knew of the presence of the terrorist documents in the lorry and that therefore it could not be said that he had them under his control.

With regard to the evidence of the surrendered terrorists I do not think that this is a case where it is necessary to consider at length the great mass of authority as to when this type of evidence is and is not admissible. What the evidence in the present case amounted to, if it was believed, was that on two or three occasions the accused had been seen in the company of terrorists in the area where he worked and that on one of these occasions he was seen to receive some letters from a terrorist of the same name as the addressee of one of the letters found in the lorry. To my mind, this is on all fours with giving evidence in

a case where A is charged with receiving stolen goods from B to the effect that in the past A had been seen associating with thieves and that on a previous occasion he received other goods from B which may or may not have been stolen. Such evidence has always been held to be inadmissible on the ground that it goes to shew not that the accused has committed the particular offence with which he is charged but that he is the sort of person who is likely to have committed it. I do not think that the evidence in question here can be said to fall within any of the recognised exceptions to the rule.

The wrongful admission of this highly prejudicial evidence would in itself be sufficient to vitiate the conviction which was had on it. There are, however, other grounds on which, apart from this, the conviction cannot stand.

In his Grounds of Judgment the only reason the learned President has given for being satisfied that the documents were under the control of the accused is that "they were found on the driver's seat with accused sitting on the seat."

Now, that statement is not accurate. The documents were not found "on" the seat. They were found "in" the seat. The difference is a vital one. They were not on top of the seat so that the accused must necessarily have been aware of their presence. They were placed between the planks and the gunny sack so that the accused need not necessarily have been aware of their presence and in that connection it is to be observed that they did not constitute a bulky object whose presence could be felt but consisted of three sheets of very thin paper.

I emphasize this point because to my mind it goes to the root of the matter which is that the learned President would seem to have overlooked the consideration that control like possession implies knowledge. For reasons which I discussed in the case of *Public Prosecutor v. Ong Huat Chan & Ors.*[1], which was a case where the accused were charged with having a firearm under their control, it is a little difficult to understand what is meant by having an inanimate object under control. In that case, however, I went on to say :—

"The determination of these questions is one of no small difficulty. I do not, however, consider it necessary to attempt a solution here because the expression occurs in a highly penal statute and whatever shade of meaning is attached to it, a necessary ingredient in the guilt of any person prosecuted under the statute must be knowledge of the existence of the firearm."

The Emergency Regulations have to be interpreted like any other statute and in the absence of anything to the contrary the ordinary rule in criminal cases applies that there can be no guilt without knowledge. It is true that under the portion of the Regulations relating to terrorist documents, the Prosecution are relieved from the necessity of proving knowledge on the part of the accused that documents found under his control are terrorist documents. There is, however, nothing which relieves the Prosecution of the necessity of proving that the accused knew of the existence of the documents. In other words, in the present case it was not sufficient for the Prosecution to prove that the accused was in such a state of physical juxtaposition to the documents that so long as he remained in that position access could not be had to them. It was necessary to prove that he knew they were there.

As I have said, I am not satisfied from the Grounds of Judgment that the learned President appreciated and applied his mind to that vital question. Nor is it a case where the evidence is so clear that it can be said that knowledge is established as a necessary inference from the other facts. The accused was not the regular driver of the lorry. Anyone could have access to it. There were ten other persons in the lorry, including the regular driver, all apparently going to the forest compartment. Moreover, there is the very significant piece of evidence, the significance of which does not seem to have been appreciated, that the innocent letter written by the accused to his female friend, which was presumably intended to be delivered, was not found with the terrorist letters in the seat but was found on the accused's person. The evidence as a whole certainly pointed to one of the persons on the lorry as having knowledge of the letters but considered as a whole I do not think it can be said to point to the accused rather than, for instance, to the woman said to be sitting beside him or to the regular driver.

In all the circumstances of the case, I am compelled to say that the conviction cannot stand. The appeal is allowed. The conviction is set aside and there will be an order of acquittal and discharge.

Appeal allowed.

WONG YIAP LONG & ANOR. v. PUBLIC PROSECUTOR

[A. Cr. J. (Abbott J.) May 2, 1955]

[Seremban — Criminal Appeal No. 2 of 1955]

Betting Ordinance, 1953, ss. 2, 4(1)(c), 12, 13 and 14(1)(d) — Entry of premises on information given to Senior Police Officer — Information not reduced to writing — No prima facie case.

This was an appeal against the conviction of the appellants on charges of assisting in the management of a place used as a common betting house, offences under s. 4(1)(c) of the Betting Ordinance. At the trial, the Senior Police Officer, who led the raid on the premises, stated that he led the raid acting upon information which had been given him by some person orally in the street. He did not give any reason why the information was not